CONFERENCE ON DISARMAMENT

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LETTER DATED 25 JUNE 1991 FROM THE DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA ADDRESSED TO THE PRESIDENT OF THE CONFERENCE ON DISARMAMENT TRANSMITTING INFORMATION REGARDING UNITED STATES EXPORT CONTROLS ON CHEMICAL WEAPONS-RELATED MATERIALS AND TECHNOLOGY AND UNITED STATES DOMESTIC LEGISLATION TO ENFORCE THEM

I have the honour to forward to you the attached package of information regarding United States export controls on chemical weapons-related materials and technology and our domestic legislation to enforce them.

I request that you take the appropriate steps to register this package of information as an official document of the Conference on Disarmament and to have it distributed to all member delegations and non-member States participating in the work of the Conference.

(Signed) M. LYALL BRECKON
Deputy Representative of the
United States of America to
the Conference on Disarmament

GE.91-61542/6482a

Information Package on U.S. Export Controls

In his May 13, 1991 Chemical Weapons Convention initiative, President Bush announced that the United States would provide extensive information to other states regarding U.S. export controls on chemical weapons-related materials and technology and U.S. domestic legislation to enforce them. The U.S. CD delegation is pleased to make this information available to all interested states. We hope that it will be useful to other states engaged in the process of enacting similar non-proliferation controls.

The following materials are included in this package:

- Executive Order 12735. Issued by the White House on November 16, 1990, Executive Order 12735 instructed all heads of departments or agencies of the United States government to take appropriate actions to halt CW/BW proliferation, including controls on any exports that would assist a country in acquiring the capability to develop, produce, stockpile, deliver or use chemical or biological weapons.

- White House Fact Sheet on Enhanced Proliferation Control Initiative. This December 13, 1990 statement launches the Enhanced Proliferation Control Initiative (EPCI) as a response to the President's call for increased U.S. government efforts to combat the spread of weapons of mass destruction.

- White House Press Statement and Fact Sheet on New Nonproliferation Initiatives. This March 7, 1991 statement announces the publication of regulations intended to implement both Executive Order 12735 and the Enhanced Proliferation Control Initiative.

- Federal Register Regulations. On March 13, 1991, the Department of Commerce issued implementing regulations which, inter alia, established worldwide export controls on fifty chemical weapons precursors identified by the Australia Group list.

THE WHITE HOUSE

Office of the Press Secretary

November 16, 1990

EXECUTIVE ORDER

12735

CHEMICAL AND BIOLOGICAL WEAPONS
PROLIFERATION

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), and section 301 of title 3 of the United States Code,

I, GEORGE BUSH, President of the United States of America, find that proliferation of chemical and biological weapons constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States and hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

Section 1. International Negotiations. It is the policy of the United States to lead and seek multilaterally coordinated efforts with other countries to control the proliferation of chemical and biological weapons. The Secretary of State shall accordingly ensure that the early achievement of a comprehensive global convention to prohibit the production and stockpiling of chemical weapons, with adequate provisions for verification, shall be a top priority of the foreign policy of the United States, and the Secretary of State shall cooperate in and lead multilateral efforts to stop the proliferation of chemical weapons.

Sec. 2. Imposition of Controls. As provided herein, the Secretary of State and the Secretary of Commerce shall use their authorities, including the Arms Export Control Act and Executive Order No. 12730, respectively, to control any exports that either Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this order.

Sec. 3. Department of Commerce Controls. (a) The Secretary of Commerce shall prohibit the export of any goods, technology, or services subject to his export jurisdiction that the Secretary of Commerce and the Secretary of State determine, in accordance with regulations issued pursuant to this order, would assist a foreign country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or

biological weapons. The Secretary of Commerce and the Secretary of State shall develop an initial list of such goods, technology, and services within 90 days of this order. The Secretary of State shall pursue early negotiations with foreign governments to adopt effective measures comparable to those imposed under this section.

(b) Subsection (a) will not apply to exports if their destination is a country with whose government the United States has entered into a bilateral or multilateral arrangement for the control of chemical or biological weapons-related goods (including delivery systems) and technology, or maintains domestic export controls comparable to controls that are imposed by the United States with respect to such goods and technology or that are otherwise deemed adequate by the Secretary of State.

(c) The Secretary of Commerce shall require validated licenses to implement this order and shall coordinate any license applications with the Secretary of State and the Secretary of Defense.

Sec. 4. Sanctions Against Foreign Persons. (a) Sanctions shall be imposed on foreign persons with respect to chemical and biological weapons proliferation, as specified in subsections (b)(1) through (b)(5).

(b)(1) Sanctions shall be imposed on a foreign person if the Secretary of State determines that the foreign person on or after the effective date of this order knowingly and materially contributed to the efforts of a foreign country referred to in subsection (2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.

(2) The countries referred to in subsection (1) are those that the Secretary of State determines have either used chemical or biological weapons in violation of international law or have made substantial preparations to do so on or after the effective date of this order.

(3) No department or agency of the United States Government may procure, or enter into any contract for the procurement of, any goods or services from any foreign person referred to in subsection (1). The Secretary of the Treasury shall prohibit the importation into the United States of products produced by that foreign person.

(4) Sanctions imposed pursuant to this section may be terminated or not imposed against foreign persons if the Secretary of State determines that there is reliable evidence that the foreign person concerned has ceased all activities referred to in subsection (1).

(5) The Secretary of State and the Secretary of the Treasury may provide appropriate exemptions for procurement contracts necessary to meet U.S. operational military requirements or requirements under defense production agreements, sole source suppliers, spare parts, components, routine servicing and maintenance of products, and medical and humanitarian items. They may provide exemptions for contracts in existence on the date of this order under appropriate circumstances.

Sec. 5. Sanctions Against Foreign Countries. (a) Sanctions shall be imposed on foreign countries with respect to chemical and biological weapons proliferation, as specified in subsections (b) and (c).

(b) The Secretary of State shall determine whether any foreign country has, on or after the effective date of this order, (1) used chemical or biological weapons in violation of international law; or (2) made substantial preparations to use chemical or biological weapons in violation of international law; or (3) developed, produced, or stockpiled chemical or biological weapons in violation of international law.

(c) The following sanctions shall be imposed on any foreign country identified in subsection (b)(1) unless the Secretary of State determines that any individual sanction should not be applied due to significant foreign policy or national security reasons. The sanctions specified in this section may be made applicable to the countries identified in subsections (b)(2) or (b)(3) when the Secretary of State determines that such action will further the objectives of this order pertaining to proliferation. The sanctions specified in subsection (c)(2) below shall be imposed with the concurrence of the Secretary of the Treasury.

(1) Foreign Assistance. No assistance shall be provided to that country under the Foreign Assistance Act of 1961 or the Arms Export Control Act other than assistance that is intended to benefit the people of that country directly and that is not channeled through governmental agencies or entities of that country.

(2) Multilateral Development Bank Assistance. The United States shall oppose any loan or financial or technical assistance to that country by international financial institutions in accordance with section 701 of the International Financial Institutions Act (22 U.S.C. 262d).

(3) Denial of Credit or Other Financial Assistance. The United States shall deny to that country any credit or financial assistance by any department, agency, or instrumentality of the United States Government.

(4) Prohibition on Arms Sales. The United States Government shall not, under the Arms Export Control Act, sell to that country any defense articles or defense services or issue any license for the export of items on the United States Munitions List.

(5) Exports of National Security-Sensitive Goods and Technology. No exports shall be permitted of any goods or technologies controlled for national security reasons under Export Administration Regulations.

(6) Further Export Restrictions. The Secretary of Commerce shall prohibit or otherwise substantially restrict exports to that country of goods, technology, and services (excluding agricultural commodities and products otherwise subject to control).

(7) Import Restrictions. Restrictions shall be imposed on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.

(8) Landing Rights. At the earliest practicable date, the Secretary of State shall terminate, in a manner consistent with international law, the authority of any air carrier that is controlled in fact by the government of that country to engage in air transportation (as defined in section 101(10) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(10)).

Sec. 6. Duration. Any sanctions imposed pursuant to sections 4 or 5 shall remain in force until the Secretary of State determines that lifting any sanction is in the foreign policy or national security interests of the United States or, as to sanctions under section 4, until the Secretary has made the determination under section 4(b)(4).

Sec. 7. Implementation. The Secretary of State, the Secretary of the Treasury, and the Secretary of Commerce are hereby authorized and directed to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. These actions, and in particular those in sections 4 and 5, shall be made in consultation with the Secretary of Defense and, as appropriate, other agency heads. The Secretary concerned may redelegate any of these functions to other officers in agencies of the Federal Government. All heads of departments and agencies of the United States Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations.

Sec. 8. Judicial Review. This order is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or any other person.

Sec. 9. Effective Date. This order is effective immediately.

This order shall be transmitted to the Congress and published in the Federal Register.

GEORGE BUSH

THE WHITE HOUSE,
November 16, 1990.

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THE WHITE HOUSE

Office of the Press Secretary

December 13, 1990

FACT SHEET ON ENHANCED PROLIFERATION CONTROL INITIATIVE

Responding to the President's call in his speech before the UN General Assembly to "redouble our efforts to stem the spread" of missile technology as well as nuclear, chemical, and biological weapons, an interagency study proposed a series of measures designed to ensure that these weapons and the technology to make them do not fall into the wrong hands. The "Enhanced Proliferation Control Initiative" includes the following elements:

1. The United States shall adopt worldwide export controls on 50 precursors for chemical weapons and shall urge all nations that manufacture these chemicals to adopt equivalent controls.

2. Export licenses shall be required for proposed exports of potentially chemical-weapon-related industrial facilities, and related designs and technology.

3. Export licenses shall be required for any export destined for a publicly-listed company, ministry, project, or other entity that is engaged in activities of proliferation concern.

4. Export licenses shall be required when an exporter knows or is informed by the U.S. Government that a proposed export may be destined for a project of proliferation concern. (A similar regulation already applies to exports of possible nuclear-weapon concerns.)

5. Current regulations shall be supplemented by control lists of (i) dual-use equipment and technology related to chemical weapons, biological weapons, and missiles, and (ii) countries to which such equipment and technology shall be controlled.

6. Civil and criminal penalties shall be imposed upon U.S. citizens who knowingly participate in activities that promote the spread of missile technology and chemical weapons. (Similar penalties already apply in the areas of nuclear and biological weapons.)

These measures will implement portions of Executive Order No. 12735, issued by President Bush on November 16, 1990, to combat the spread of chemical and biological weapons. Close consultations with members of Congress and American industry will now be required to ensure the effective implementation of these measures by February 16.

The United States will seek the widest and earliest multilateral concurrence in these measures, recognizing that the support of other supplier nations is essential to effective export controls.

# # #

THE WHITE HOUSE

Office of the Press Secretary

March 7, 1991

The United States has taken a major step in its continuing efforts to halt the spread of weapons of mass destruction, with the issuance of regulations extending export controls over chemicals, equipment, and other assistance that can contribute to the spread of missiles and chemical and biological weapons.

Saddam Hussein's use of chemical weapons against his own citizens, his use of SCUD missiles to terrorize civilian populations, and the chilling specter of germ warfare and nuclear weapons have brought home the dangers proliferation poses to American interests and global peace and stability.

Our continuing efforts to stem the spread of weapons of mass destruction will contribute to the construction of a New World Order. The new regulations will enhance our ability to head off these dangers so that, in the future, we will not be forced to confront them militarily as we have in Iraq. At the same time, the new regulations are sensitive to the importance of U.S. exports to our economic vitality, and will not unfairly restrict legitimate commerce.

The expanded U.S. export controls apply to equipment, chemicals, and whole plants that can be used to manufacture chemical or biological weapons, as well as to activities of U.S. exporters or citizens when they know or are informed that their efforts will assist in a foreign missile or chemical or biological weapon program.

But the United States cannot do the job alone. Our experience in the Gulf has reinforced the lesson that the most effective export controls are those imposed multilaterally. The Administration has therefore initiated vigorous efforts to obtain allied support for chemical and biological weapon export controls in the Australia Group, missile export controls in the Missile Technology Control Regime, and nuclear export controls through consultations with all major nuclear suppliers. These efforts will take advantage of the growing international consensus to redouble our efforts to stem the spread of weapons of mass destruction.

The proliferation of weapons of mass destruction may profoundly challenge our national security in the 1990s. The new regulations issued today and our multilateral initiatives will enhance our ability to meet that challenge squarely.

# # #

FACT SHEET ON NEW NONPROLIFERATION REGULATIONS

Three regulations are being published in the Federal Register. These regulations will contribute to our nonproliferation efforts by implementing parts of the Executive Order on chemical and biological weapons (CBW) issued by the President last November and the Enhanced Proliferation Controls Initiative launched last December. At the same time, the regulations have been designed to minimize interference with legitimate international trade.

The first regulation establishes a list of dual-use equipment with legitimate commercial uses, but also potential applications to chemical and biological weapons production. Licenses will now be required before exporting any such dual-use equipment to particularly sensitive regions, such as the Middle East and Southwest Asia, as well as to countries elsewhere whose activities may have CBW-related implications. The equipment list, which reflects a three-month effort involving extensive consultations with industry, is unprecedented: Never before have U.S. export licenses been required for dual-use, CBW-related equipment.

The second regulation expands from eleven to fifty the list of "precursor chemicals" that require an export license. Like dual-use equipment, these chemicals are commonly used in commercial products. But they have also been identified by the Australia Group as key ingredients in the manufacture of chemical weapons. The Australia Group is a multilateral forum of twenty supplier nations (including the United States) committed to restricting the spread of chemical weapons. The United States will now join the growing number of Australia Group members that require a license to export any of the fifty precursor chemicals to any country outside the Group.

The third regulation provides additional controls, focused on knowing exports or other support by U.S. firms or individuals for CBW or missile programs abroad. Under its terms, if the U.S. government learns of possible American assistance to such programs, it will be able to intervene to prevent it. This regulation will impose new licensing requirements in the following instances:

(1) A U.S. person knows that a proposed export or other assistance is destined for CBW or missile activities in listed regions, countries, or projects;

(2) A U.S. person is informed by the U.S. Government that a proposed export or other assistance is destined for CBW or missile activities anywhere in the world; or

(3) An export of a whole chemical plant that manufactures any of the 50 chemical precursors, or assistance in designing such a plant, is destined to any country outside the Australia Group.

The new restriction on participation by U.S. persons in CW or missile-related projects is similar to export restrictions that already apply to BW- and nuclear-related exports. Civil and criminal penalties may be imposed upon those who breach these controls.

The regulations providing controls on dual-use equipment and precursor chemicals already have been the subject of extensive consultations with industry, and will be issued as interim rules. In this form, the regulations will be effective on the date of publication, although they may be modified following the thirty-day public comment period. The third regulation imposing additional controls is being issued as a proposed rule. This regulation will become effective when a final rule is issued, after the close of the thirty-day public comment period.

To be truly effective, comparable controls must be applied by all major suppliers. To that end, the Administration is vigorously pursuing multilateral adoption of these new export controls in the Australia Group, the Missile Technology Control Regime, and various international nuclear fora.

federal register

Wednesday
March 13, 1991

Part VI

Department of Commerce

Bureau of Export Administration

15 CFR Parts 770, 776, 778, and 799
Expansion of Foreign Policy Controls on Chemical Weapon Precursors; Imposition of Foreign Policy Controls on Equipment and Technical Data Related to the Production of Chemical and Biological Weapons; Interim Rules

15 CFR Parts 771, 776, and 778
Imposition and Expansion of Foreign Policy Controls; Proposed Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 776 and 799

[Docket No. 910237-1037]

Expansion of Foreign Policy Controls on Chemical Weapon Precursors

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: In support of U.S. policies opposing the proliferation and use of chemical weapons, the Department of Commerce is expanding the foreign policy controls on exports of certain chemical weapon precursors (i.e., chemicals that can be used in the manufacture of chemical weapons).

This interim rule amends the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR), by expanding the number of countries for which a validated license is required for thirty-nine precursor chemicals. Under this rule, the thirty-nine chemicals will require a validated license for export to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. Previously, these chemicals required a validated license only for export to Country Groups S and Z, Iran, Iraq, Syria, and military and police entities in the Republic of South Africa.

DATES: This rule is effective March 13, 1991. Comments must be received by April 12, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on chemical weapon precursors, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION:

Background

This interim rule expands the number of countries for which a validated license is required to export thirty-nine precursor chemicals. Under this rule, a validated license is now required to export these chemicals to all destinations except NATO member countries, Australia, Austria, Ireland, Japan, New Zealand, and Switzerland. This rule amends the CCL by adding to ECCN 4798B the thirty-nine chemicals formerly controlled under ECCN 5798F and removing ECCN 5798F from the CCL.

The changes made by this rule address one of the measures called for in President Bush's December 13, 1990, decision on the Enhanced Proliferation Control Initiative (EPCI) and included in Executive Order 12735 of November 16, 1990, on chemical and biological weapons proliferation. Executive Order 12735 of November 16, 1990, directs the Secretary of Commerce to exercise his authority under Executive Order 12730 to control exports that the Secretary determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons. The EPCI directs the Commerce Department to adopt worldwide export controls on fifty chemical weapons precursors. Worldwide controls were already in place for eleven of these fifty chemicals under ECCN 4798B. The revision to ECCN 4798B, which adds the thirty-nine chemicals formerly controlled under ECCN 5798F, provides worldwide export controls on all fifty chemicals consistent with the President's directive. These fifty chemicals have been identified as precursors by the twenty-nation Australia Group, which seeks to control the proliferation of chemical weapons. The United States will seek the agreement of all Australia Group governments to adopt equivalent controls.

Consistent with the expansion of foreign policy controls on exports of chemical precursors, this rule also amends § 776.19 to apply the reexport provisions of part 774 to reexports of chemical precursors controlled under ECCN 4798B and to apply the parts and components provisions of § 776.12 to all items controlled under ECCNs 4798B, 4997B, and 4998B.

This rule also amends Supplement No. 1 to § 799.2 (Commodity Interpretations) by revising "Interpretation 23: Precursor Chemicals" to reflect the changes in the list of chemicals controlled by ECCN 4798B and the removal of ECCN 5798F.

The general policy of denying applications to export or reexport chemicals controlled under ECCN 4798B to Iran, Iraq, Libya and Syria remains in effect. Exports and reexports to other destinations will generally be approved unless there is reason to believe the chemicals will be used in producing chemical weapons or otherwise devoted to chemical warfare purposes.

The contract sanctity provisions contained in this rule are consistent with the requirements of the Export Administration Act of 1979, as amended (EAA). However, serious consideration is being given to eliminating these contract sanctity provisions when the final rule is published, in light of the serious concerns raised by chemical and biological weapons. The Department invites public comments on this issue, as well as all other aspects of the regulation.

The Department of Commerce has submitted a report to the Congress to support this expansion in U.S. foreign policy controls.

Saving Clause

Shipments of items removed from general license authorization as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before March 27, 1991, may be exported under the previous general license provisions up to and including April 10, 1991. Any such items not actually exported before midnight April 10, 1991, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694-0005 and 0694-0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public

participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the contract sanctity provisions contained in this rule are especially encouraged.

The period for submission of comments will close April 12, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-5653.

List of Subjects in 15 CFR Parts 776 and 799

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 776 and 799 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for 15 CFR parts 776 and 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 776—[AMENDED]

§ 776.19 [Amended]

2. Section 776.19 is amended:

a. By removing paragraph (a)(ii) and redesignating paragraphs (a)(i) and (a)(iii) as new paragraphs (a)(1) and (a)(2), respectively;

b. By revising paragraphs (b) and (e);

c. By removing paragraph (i);

d. By redesignating paragraphs (f), (g), and (h) as new paragraphs (g), (h), and (i), respectively;

e. By adding a new paragraph (f);

f. By removing paragraph (l) and redesignating paragraph (m) as new paragraph (n);

g. By redesignating paragraphs (j) and (k) as new paragraphs (l) and (m), respectively; and

h. By adding new pargraphs (j) and (k), as follows:

§ 776.19 Chemical and biological agents.

* * * * *

(b) Unless one or more of the criteria stated in paragraphs (c) through (k) of this section are met, applications to export the goods in ECCNs 4798B, 4997B, and 4998B will generally be denied to Libya, Iran, Iraq, and Syria. Applications will generally be approved to other destinations, except where there is reason to believe that those goods will be used in producing chemical or biological weapons or will otherwise be devoted to chemical or biological warfare purposes.

* * * * *

(e) The contract sanctity date for exports of items in ECCNs 4997B and 4998B from the United States to Iran, Iraq, or Syria is February 22, 1989.

(f) The contract sanctity date for exports of the following chemicals from the United States to Iran or Iraq is February 22, 1989: Dimethyl methylphosphonate, methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorus oxychloride, and thiodiglycol. The contract sanctity date for exports of the following chemicals from the United States to Syria is February 22, 1989: Dimethyl methylphosphonate, methylphosphonyl dichloride, and methylphosphonyl difluoride.

* * * * *

(j) The contract sanctity date for exports of chemicals controlled by ECCN 4798B from the United States to all destinations (except Iran, Iraq, Libya, or Syria) is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorus oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride, triethanolamine, and trimethyl phosphite. (See also paragraphs (h) and (i) of this section.) This provision does not apply to exports to Country group Z or to military or police entities in the Republic of South Africa. For exports to Iran, Iraq, Libya, Syria, see paragraphs (c) through (g) of this section.

(k) The contract sanctity date for reexports of chemicals controlled under ECCN 4798B to any destination (except Iran, Iraq, Libya, or Syria) is March 7, 1991. The contract sanctity date for reexports of these chemicals to Iran, Iraq, Libya, or Syria is December 12, 1989. This provision does not apply to exports to Country Group Z or to military or police entities in the Republic of South Africa.

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PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

3. In Supplement No. 1 to Section 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products, and Related Materials), ECCN 4798B is amended by revising the List of Chemicals Controlled, as follows:

4798B Precursor and intermediate chemicals used in the production of chemical warfare agents.

* * * * *

List of Chemicals Controlled by ECCN 1798B

(See Supplement No. 1 to 799.2, Interpretation 23: Precursor Chemicals, for synonyms for the following chemicals.)

(1) (C.A.S. #1341-49-7) Ammonium hydrogen fluoride;

(2) (C.A.S. #7784-34-1) Arsenic trichloride;

(3) (C.A.S. #76-93-7) Benzilic acid;

(4) (C.A.S. #107-07-3) 2-Chloroethanol;

(5) (C.A.S. #78-38-6) Diethyl ethylphosphonate;

(6) (C.A.S. #15715-41-0) Diethyl methylphosphonite;

(7) (C.A.S. #2404-03-7) Diethyl-N,N-dimethylphosphoramidate;

(8) (C.A.S. #762-04-9) Diethyl phosphite;

(9) (C.A.S. #100-37-8) N,N-Diethylethanolamine;

(10) (C.A.S. #5842-07-9) N,N-Diisopropyl-.beta.-aminoethane thiol;

(11) (C.A.S. #96-80-0) N,N-Diisopropyl-.beta.-aminoethanol;

(12) (C.A.S. #96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride;

(13) (C.A.S. #108-18-9) Diisopropylamine;

(14) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate;

(15) (C.A.S. #756-79-6) Dimethyl methylphosphonate;

(16) (C.A.S. #868-85-9) Dimethyl phosphite [dimethyl hydrogen phosphite];

(17) (C.A.S. #124-40-3) Dimethylamine;

(18) (C.A.S. #506-59-2) Dimethylamine hydrochloride;

(19) (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL);

(20) (C.A.S. #1498-40-4) Ethylphosphonous dichloride [Ethylphosphinyl dichloride]; [1]

(21) (C.A.S. #430-78-4) Ethylphosphonus difluoride [Ethylphosphinyl difluoride]; [2]

(22) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride;

(23) (C.A.S. #753-98-0) Ethylphosphonyl difluoride;

(24) (C.A.S. #7664-39-3) Hydrogen fluoride;

(25) (C.A.S. #3554-74-3) 3-Hydroxyl-l-methylpiperidine;

(26) (C.A.S. #76-89-1] Methyl Benzilate;

(27) (C.A.S. #676-83-5) Methylphosphonous dichloride [Methylphosphinyl dicloride]; [3]

(28) (C.A.S. #753-59-3) Methylphosphonous difluoride [Methylphosphinyl difluoride]; [4]

(29) (C.A.S. #676-97-1) Methylphosphonyl dichloride;

(30) (C.A.S. #676-99-3) Methylphosphonyl difluoride;

(31) (C.A.S. #10025-87-3) Phosphorus Oxychloride;

(32) (C.A.S. #10026-13-8) Phosphorus pentachloride;

(33) (C.A.S. #1314-80-3) Phosphorus pentasulfide;

(34) (C.A.S. #7719-12-2) Phosphorus trichloride;

(35) (C.A.S. #75-97-8) Pinacolone;

(36) (C.A.S. #464-07-3) Pinacolyl alcohol;

(37) (C.A.S. #151-50-8) Potassium cyanide;

(38) (C.A.S. #7789-23-3) Potassium fluoride;

(39) (C.A.S. #7789-23-9) Potassium hydrogen fluoride;

(40) (C.A.S. #1619-34-7) 3-Quinuclidinol;

(41) (C.A.S. #3731-38-2) 3-Quinuclidinone;

(42) (C.A.S. #1333-83-1) Sodium bifluoride;

(43) (C.A.S. #143-33-9) Sodium cyanide;

(44) (C.A.S. #7681-49-4) Sodium fluoride;

(45) (C.A.S. #1313-82-2) Sodium sulfide;

(46) (C.A.S. #111-48-8) Thiodiglycol;

(47) (C.A.S. #7719-09-7) Thionyl chloride;

(48) (C.A.S. #102-71-6) Triethanolamine;

(49) (C.A.S. #122-52-1) Triethyl phosphite; and

(50) (C.A.S. #121-45-9) Trimethyl phosphite.

4. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 5798F is removed.

Supplement No. 1 to § 799.2 [Amended]

5. In Supplement No. 1 to § 799.2 (Interpretations), Interpretation 23 (Precursor Chemicals) is revised to read as follows:

Interpretation 23: Precursor Chemicals

Following is a listing of chemicals controlled by ECCN 1798B that includes their Chemical Abstract Service Registry (C.A.S.) number and synonyms (i.e., alternative names). These chemicals require a validated license to all countries except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom.

(1) (C.A.S. #1341-49-7) Ammonium hydrogen fluoride
- Acid ammonium fluoride
- Ammonium bifluoride
- Ammonium difluoride
- Ammonium hydrofluoride
- Ammonium hydrogen bifluoride
- Ammonium hydrogen difluoride
- Ammonium monohydrogen difluoride

(2) (C.A.S. #7784-34-1) Arsenic trichloride
- Arsenic (III) chloride
- Arsenous chloride
- Fuming liquid arsenic
- Trichloroarsine

(3) (C.A.S. #76-93-7) Benzilic acid
- .alpha.,.alpha.-Diphenyl-.alpha.-hydroxyacetic acid
- Diphenylglycolic acid
- .alpha.,.alpha.-Diphenylglycolic acid
- Diphenylhydroxyacetic acid
- .alpha.-Hydroxy-2,2-diphenylacetic acid
- 2-Hydroxy-2,2-diphenylacetic acid
- .alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid
- Hydroxydiphenylacetic acid

(4) (C.A.S. #107-07-3) 2-Chloroethanol
- 2-Chloro-1-ethanol
- Chloroethanol
- 2-Chloroethyl alcohol
- Ethene chlorohydrin
- Ethylchlorohydrin
- Ethylene chlorhydrin
- Ethylene chlorohydrin
- Glycol chlorohydrin
- Glycol monochlorohydrin
- 2-Hydroxyethyl chloride

(5) (C.A.S. #78-38-6) Diethyl ethylphosphonate
- Ethylphosphonic acid diethyl ester

(6) (C.A.S. #15715-41-0) Diethyl methylphosphonite
- Diethoxymethylphosphine
- Diethyl methanephosphonite
- O,O-Diethyl methylphosphonite
- Methyldiethoxyphosphine
- Methylphosphonous acid diethyl ester

(7) (C.A.S. #2404-03-7) Diethyl-N,N-dimethylphosphoramidate
- N,N-Dimethyl-O,O'-diethyl phosphoramidate
- Diethyl dimethylphosphoramidate
- Dimethylphosphoramidic acid diethyl ester

(8) (C.A.S. #762-04-9) Diethyl phosphite
- Diethoxyphosphine oxide
- Diethyl acid phosphite
- Diethyl hydrogen phosphite
- Diethyo phosphonate
- Hydrogen diethyl phosphite

(9) (C.A.S. #100-37-8) N,N-Diethylethanolamine
- N,N-Diethyl-2-aminoethanol
- Diethyl (2-hydroxyethyl)amine
- N,N-Diethyl-N-(.beta.-hydroxyethyl)amine
- N,N-Diethyl-2-hydroxyethylamine
- Diethylaminoethanol
- 2-(Diethylamino)ethanol
- Diethylaminoethyl alcohol
- N,N-Diethylmonoethanolamine
- (2-Hydroxyethyl)diethylamine
- 2-Hydroxytriethylamine

(10) (C.A.S. #5842-07-9) N,N-Diisopropyl-.beta.-aminoethane thiol
- 2-(Diisopropylamino) ethanethiol

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[1] Chemical name and alternatives in the List of Chemicals for this ECCN 1798B.

[2] See footnote 1 to this ECCN 1798B.

[3] See footnote 1 to this ECCN 1798B.

[4] See footnote 1 to this ECCN 1798B.

Diisopropylaminoethanethiol
beta.-Diisopropylaminoethanethiol
2-(bis(1-Methylethyl)amino) ethanethiol
(11) (C.A.S. #96-80-0) N,N-Diisopropyl-.beta.-aminoethanol
N,N-Diisopropyl-2-aminoethanol
2-(Diisopropylamino) ethanol
(N,N-Diisopropylamino) ethanol
2-(Diisopropylamino) ethyl alcohol
N,N-Diisopropylethanolamine
(12) (C.A.S. #96-79-7) N,N-Diisopropyl-.beta.-aminoethyl chloride
2-Chloro-N,N-diisoproplethanamine
1-Chloro-N,N-diisopropylaminoethane
2-Chloro-N,N-diisopropylethylamine
N-(2-chlorethyl)-N-(1-methylethyl)-2-propanamine
N-(2-Chloroethyl) diisopropylamine
N,N-Diisopropyl-2-chloroethylamine
1-(Diisopropylamino)-2-cholorethane
2-(Diisopropylamino) ethyl chloride
Diisopropylaminoethyl chloride
beta.-Diisopropylaminoethyl chloride
(13) (C.A.S. #108-18-9) Diisopropylamine
N,N Diisopropylamine
N-(1-Methylethyl)-2-propanamine
(14) (C.A.S. #6163-75-3) Dimethyl ethylphosphonate
Dimethyl ethanephosphonate
Ethylphosphonic acid dimethyl ester
(15) C.A.S. #756-79-6) Dimethyl methylphosphonate
Dimethoxymethyl phosphine oxide
Dimethyl methanephosphonate
Methanephosphonic acid dimethyl ester
Methylphosphonic acid dimethyl ester
(16) (C.A.S. #868-85-9) Dimethyl phosphite
Dimethoxphosphine oxide
Dimethyl acid phosphite
Dimethyl hydrogen phosphite
Dimethyl phosphonate
Hydrogen dimethyl phosphite
Methyl phosphonate
(17) (C.A.S. #124-40-3) Dimethylamine
N-Methyl methanamine
(18) (C.A.S. #506-59-2) Dimethylamine hydrochloride
Dimethylammonium chloride
N-Methyl methanamine hydrochloride
(19) (C.A.S. #57856-11-8) O-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL)
Methylphosphonous acid 2-(bis(1-methylethyl)amino)ethyl ethyl ester
(20) (C.A.S. #1498-40-4) Ethylphosphonous dichloride
Dichloroethylphosphine
Ethyl phosphonous dichloride
Ethyldichlorophosphine
(21) (C.A.S. #430-78-4) Ethylphosphonus difluoride
Ethyldifluorophosphine
(22) (C.A.S. #1066-50-8) Ethylphosphonyl dichloride
Dichloroethylphosphine oxide
Ethanephosphonyl chloride
Ethylphosphinic dichloride
Ethylphosphonic acid dichloride
Ethylphosphonic dichloride
(23) (C.A.S. #753-98-0) Ethylphosphonyl difluoride
Ethyl difluorophosphite
Ethyldifluorophosphine oxide
Ethylphosphonic difluoride
(24) (C.A.S. #7664-39-3) Hydrogen fluoride
Anhydrous hydrofluoric acid
Fluorhydric acid
Fluorine monohydride
Hydrofluoric acid gas
(25) (C.A.S. #3554-74-3) 3-Hydroxyl-1-methylpiperidine
3-Hydroxy-N-methylpiperidine
1-Methyl-3-hdroxypiperidine
N-Methyl-3-hydroxypiperidine
1-Methyl-3-piperidinol
N-Methyl-3-piperidonol
(26) (C.A.S. #76-89-1) Methyl benzilate
Benzilic acid methyl ester
.alpha.-Hydroxy-.alpha.-phenylbenzeneacetic acid methyl ester
Methyl .alpha.-phenylmandelate
Methyl diphenylglycolate
(27) (C.A.S. #676-83-5) Methylphosphonous dichloride
Dichloromethylphosphine
Methyldichlorophosphine
Methylphosphorus dichloride
(28) (C.A.S. #753-59-3) Methylphosphonous difluoride
Difluoromethylphosphine
Methyldifluorophosphine
(29) (C.A.S. #676-97-1) Methylphosphonyl dichloride
Dichloromethylphosphine oxide
Methanephosphonodichloridic acid
Methanephosphonyl chloride
Methylphosphonic acid dichloride
Methylphosphonic dichloride
Methylphosphonodichloridic acid
Methylphosphonyl chloride
(30) (C.A.S. #676-99-3) Methylphosphonyl difluoride
Difluoromethylphosphine oxide
Methyl difluorophosphite
Methylphosphonic difluoride
(31) (C.A.S. #10025-87-3) Phosphorus oxychloride
Phosphonyl trichloride
Phosphoric chloride
Phosphoric trichloride
Phosphoroxychloride
Phosphoroxytrichloride
Phosphorus chloride oxide
Phosphorus monoxide trichloride
Phosphorus oxide trichloride
Phosphorus oxytrichloride
Phosphorus trichloride oxide
Phosphoryl trichloride
Trichlorophosphine oxide
Trichlorophosphorus oxide
(32) (C.A.S. #10026-13-8) Phosphorus pentachloride
Pentachlorophosphorane
Pentachlorophosphorus
Phosphoric chloride
Phosphorus(V) chloride
Phosphorus perchloride
(33) (C.A.S. #1314-80-3) Phosphorus pentasulfide
Diphosphorus pentasulfide
Phosphoric sulfide
Phosphorus persulfide
Phosphorus sulfide
(34) (C.A.S. #7719-12-2) Phosphorus trichloride
Phosphorus chloride
Trichlorophosphine
(35) (C.A.S. #75-97-8) Pinacolone
tert-Butyl methly ketone
2,2-Dimethyl-3-butanone
3,3-Dimethyl-2-butanone
2,2-Dimethylbutanone
3,3-Dimethylbutanone
1,1-Dimethylethyl methyl kentone
Methyl tert-butyl ketone
Pinacolin
Pinacoline
1,1,1-Trimethylacetone
(36) (C.A.S. #464-07-3) Pinacolyl alcohol
tert-Butyl methyl carbinol
2,2-Dimethyl-3-butanol
3,3-Dimethyl-2-butanol
1-Methyl-2,2-dimethylpropanol
(37) (C.A.S. #151-50-8) Potassium cyanide
(38) (C.A.S. #7789-23-3) Potassium fluoride
Potassium monofluoride
(39) (C.A.S. #7789-29-9) Potassium hydrogen fluoride
Hydrogen potessium difluoride
Hydrogen potassium fluoride
Potassium acid fluoride
Potassium bifluoride
Potassium hydrogen difluoride
Potassium monohydrogen difluoride
(40) (C.A.S. #1619-34-7) 3-Quinuclidinol
1-Azabicyclo(2.2.2)octan-3-ol
3-Hydroxyquinuclidine
(41) (C.A.S. #3731-38-2) 3-Quinuclidinone
1-Azabicyclo(2.2.2)octan-3-one
3-Oxyquinuclidine
Quinuclidone
(42) (C.A.S. #1333-83-1) Sodium bifluoride
Sodium hydrogen difluoride
Sodium hydrogen fluoride
Thiophosphoric anhydride
(43) (C.A.S. #143-33-9) Sodium cyanide
(44) (C.A.S. #7681-49-4) Sodium fluoride
Sodium monofluoride
(45) (C.A.S. #1313-82-2) Sodium sulfide
Disodium monosulfide
Disodium sulfide
Sodium monosulfide
Sodium sulphide
(46) (C.A.S. #111-48-8) Thiodiglycol
Bis(2-hydroxyethyl) sulfide
Bis(2-hydroxyethyl) thioether
Di(2-hydroxyethyl) sulfide
Diethanol sulfide
2,2'-Dithiobis-(ethanol)
3-Thiapentane-1,5-diol
2,2'-Thiobisethanol
2,2'-Thiodiethanol
Thiodiethylene glycol
2,2'-Thiodiglycol
(47) (C.A.S. #7719-09-7) Thionyl chloride
Sulfinyl chloride
Sulfinyl dichoioride
Sulfur chloride oxide
Sulfur oxychloride
Sulfurous dichloride
Sulfurous oxychloride
Thionyl dichloride
(48) (C.A.S. #102-71-6) Triethanolamine
Alkanolamine 244
Nitrilotriethanol
2,2',2''-Nitrilotriethanol
2,2',2''-Nitrilotris(ethanol)
TEA
TEA(amino alcohol)
Tri(2-hydroxyethyl)amine
Triethanolamen
Tris (.beta.-hydroxyethyl)amine
Tris(2-hydroxyethyl)amine
Trolamine
(49) (C.A.S. #122-52-1) Triethyl phosphite
Phosphorous acid triethyl ester
Triethoxyphosphine

Tris(ethoxy) phosphine
(50) (C.A.S. #121-45-9) Trimethyl phosphite
Phosphorus acid trimethyl ester
Trimethoxyphosphine

Dated: March 7, 1991.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

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15 CFR Parts 770, 776, 778, and 799

[Docket No. 910241-1041]

Imposition of Foreign Policy Controls on Equipment and Technical Data Related to the Production of Chemical and Biological Weapons

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: In support of U.S. policies opposing the proliferation and prohibited use of chemical and biological weapons, the Department of Commerce is imposing foreign policy controls on exports of certain dual-use equipment that can be used to produce:

(1) Chemicals or biological agents controlled by ECCNs 4798B, 4997B, or 4998B on the Commodity Control List (CCL), Supplement No. 1 to § 799.1 of the Export Administration Regulations (EAR);

(2) Chemicals or biological warfare agents controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130).

The Department is also imposing foreign policy controls on technical data for the production of such equipment.

Specifically, this interim rule amends the Export Administration Regulations (EAR) to impose validated licensing requirements on exports of this equipment and technical data to Country Groups S and Z and countries listed in a new Supplement No. 5 to part 778 of the EAR.

DATES: This rule is effective March 13, 1991. Comments must be received by April 12, 1991.

ADDRESSES: Written comments (six copies) should be sent to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Toni Jackson, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4531.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological agents, call James Seevaratnam, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-5695.

SUPPLEMENTARY INFORMATION:

Background

This interim rule amends the Export Administration Regulations (EAR) to impose a validated licensing requirement on exports of certain equipment that can be used to produce the following:

(1) Chemicals or biological agents controlled under ECCNs 4798B, 4997B, or 4998B on the Commodity Control List (CCL);

(2) Chemicals and biological warfare agents controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130), administered by the U.S. Department of State.

This rule also creates a new § 776.20, which imposes a validated licensing requirement on exports of technical data for the production of such equipment. The equipment and technical data subject to this validated licensing requirement have diverse civil applications and, this, are not uniquely related to chemical and biological weapons production.

The validated licensing requirement for this equipment and technical data applies only to exports and reexports to Country Groups S and Z and the regions and countries listed in new Supplement No. 5 to part 778 of the EAR. Supplement No. 5 includes the Middle Eastern and Southwest Asian regions and certain other countries.

Section 776.20 establishes the licensing policy for reviewing applications to export or reexport equipment and the technical data related to chemical and biological weapons production. Exports and reexports of such items will be denied if they would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons.

This rule implements part of Executive Order 12735 of November 16, 1990, on Chemical and Biological Weapons Proliferation, as well as the Enhanced Proliferation Control Initiative (EPCI) announced on December 13, 1990. Excutive Order 12735 of November 16, 1990, directs the Secretary of Commerce to control exports that the Secretary of Commerce and the Secretary of State determine would assist a country in acquiring chemical and biological weapons capability. The EPCI directs Commerce to control dual-use equipment and technical data related to chemical and biological weapons. This rule creates new Export Control Commodity Numbers (ECCNs) in the CCL to control this equipment to Country Groups S and Z and the regions and countries listed in new Supplement 5 to part 778.

The following ECCNs are added to the CCL:

5129F: Chemical processing equipment linked with nickel or constructed of Hastelloy, Monel, or another alloy with nickel content.

5132F: Pumps or valves designed to be vapor leak proof.

5133F: Thermometers or other chemical processing sensors encased in nickel alloy.

5134F: Filling equipment enclosed in a glove box or similar environmental barrier, or incorporating a nickel-lined or Hastelloy nozzle.

5135F: Specially designed incinerators for chemical precursors listed in ECCN 4798B, chemical warfare agents, or organophosphorus compounds.

5140F: Toxic gas monitoring systems.

5141F: Monitoring systems for the detection of chemical compounds having anticholinesterase activity.

5165F: Detection or assay systems for biological agents.

5187F: Biohazard containment equipment.

5170F: Equipment for the microencapsulation of live microorganisms.

5797F: Intermediate chemicals used in the production of chemical warfare agents.

5997F: Complex media for the growth of microorganisms.

The United States will seek the agreement of all Australia Group governments to adopt equivalent controls on this equipment. The twenty-member Australia Group, in which the United States participates, seeks to prevent the proliferation of chemical and biological weapons.

The Department of Commerce has submitted a report to the Congress in accordance with section 6 of the Export Administration Act of 1979, as amended, to support this imposition of U.S. foreign policy controls.

The contract sanctity provision contained in this rule is consistent with the requirements of the Export Administration Act of 1979, as amended (EAA). However, serious consideration is being given to eliminating this contract sanctity provision when the final rule is published, in light of the serious concerns raised by chemical and biological weapons. The Department invites public comments on this issue, as

well as all other aspects of the regulation.

Consistent with the prohibitions on trade with Iraq and Kuwait contained in the Executive Orders issued on August 2 and 9, 1990, exporters should obtain guidance from the Office of Foreign Assets Control, U.S. Department of Treasury, concerning any export or reexport to Iraq or Kuwait.

Saving Clause

Shipments of items removed from general license authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard carrier to a port of export pursuant to actual orders for export before March 27, 1991, may be exported under the previous general license provisions up to and including April 10, 1991. Any such items not actually exported before midnight April 10, 1991, require a validated export license in accordance with this regulation.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the contract sanctity provision contained in this rule are especially encouraged.

The period for submission of comments will close April 12, 1991. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 1525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–5653.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Parts 778 and 799

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, parts 770, 778, 778, and 799 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR parts 770, 778 and 778 is revised to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95–242, 92 Stat. 141 (42 U.S.C. 2139(a)); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

2. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app 2401 *et seq.*), as amended; Public Law 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 770—[AMENDED]

3. Section 770.2 is amended by adding alphabetically a definition for "Middle East" a definition for "Southwest Asia" to read as follows:

§ 770.2 Definitions of terms.

* * * * *

Middle East. Geographically, this region is understood to include Bahrain, Egypt, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen.

* * * * *

Southwest Asia. Geographically, this region is understood to include Afghanistan, India, Iran, and Pakistan.

* * * * *

PART 778—[AMENDED]

4. Part 778 is amended by adding a new § 778.20 to read as follows:

§ 778.20 Equipment and technical data related to the production of chemicals and biological agents.

(a) The following controls on equipment and technical data related to the production of chemicals and biological agents are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons:

(1) Equipment identified in ECCNs 5129F, 5132F, 5133F, 5134F, 5135F, 5140F, and 5141F in the Commodity Control List, which can be used in the production of chemical weapons precursors and chemical warfare agents, requires a validated license for export from the United States to Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

(2) Equipment and materials identified in ECCNs 5165F, 5167F, 5170F, 5797F, and 5997F, which can be used in the production of biological agents, require a validated license for export from the United States to Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

(3) Technical data for the production of commodities described in paragraphs (a)(1) and (a)(2) of this section are not eligible for General License GTDR if destined for a country listed in Supplement No. 5 to part 778 of this subchapter.

(b) *Licensing policy.* (1) Unless the criteria stated in paragraph (b)(3) of this section are met, applications to export the commodities and technical data described in paragraph (a) of this section will be considered on a case-by-case basis to determine whether the export would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on individual applications:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country; and

(iv) The types of assurances or guarantees against the design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case.

(3) The contract sanctity date for the commodities and technical data described in paragraph (a) of this section is March 7, 1991.

PART 778—[AMENDED]

5. Part 778 is amended by adding a new Supplement No. 5 to read as follows:

Supplement No. 5—Dual-use Chemical and Biological Equipment: Regions, Countries, and Other Destinations

Bulgaria
China (People's Republic of)
Cuba
Middle East [1]
Myanmar (Burma)
North Korea
Romania
South Africa
Southwest Asia [2]
Soviet Union
Taiwan
Vietnam

PART 799—[AMENDED]

Supplement No. 1 to § 799.1 [Amended]

6. In Supplement No. 1 to Section 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5129F is added immediately following ECCN 4128B, as follows:

5129F Chemical processing equipment lined with nickel or constructed of Hastelloy, Monel, or another alloy with nickel content.

Controls for ECCN 5129F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 5129F

Any of the following types of chemical processing equipment lined with nickel or constructed of Hastelloy, Monel, or another alloy with a nickel content in excess of 40% by weight, as follows:

(a) Reactor vessels with a capacity greater than 5 liters;

(b) Storage tanks and containers with a capacity greater than 10 liters;

(c) Heat exchangers;

(d) Distillation columns with a capacity greater than 2 liters per hour;

(e) Degassing equipment or condensers.

7. In Supplement No. 1 to section 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5132F is added immediately following ECCN 3131A, as follows:

5132F Pumps or valves designed to be vapor leak proof.

Controls for ECCN 5132F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

List of Equipment Controlled by ECCN 5132F

Pumps or valves having any of the following characteristics:

(a) Incorporating a body made from alloy with a nickel content in excess of 40% by weight;

(b) Lined with nickel; or

(c) Otherwise designed to be vapor leak proof.

Note: This ECCN 5132F controls double seal, electromagnetic drive, or canned pumps, and bellows or diaphragm valves, having any of the characteristics described in paragraphs (a) through (c) of the List of Equipment Controlled.

8. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5133F is added immediately following ECCN 5132F, as follows:

5133F Thermometers or other chemical process sensors encased in nickel alloy having a nickel content greater than 40%.

Controls for ECCN 5133F

Unit: Report in "number".

Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

Reason for Control: Foreign policy.

Special Licenses Available: None.

9. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5134F is added immediately following ECCN 5133F, as follows:

5134F Filling equipment enclosed in a glove box or similar environmental barrier, or incorporating a nickel-lined or Hastelloy nozzle.

Controls for ECCN 5134F

Unit: Report in "number".

Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.

GLV $ Value Limit: $0 for all destinations.

Processing Code: TE.

[1] See § 770.2 of this subchapter for definition.

[2] See footnote 1.

Reason for Control: Foreign policy.
Special Licenses Available: None.

10. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5135F is added immediately following ECCN 5134F, as follows:

5135F Specially designed incinerators for chemical precursors listed in ECCN 4798B, chemical warfare agents, or organophosphorus compounds.

Controls for ECCN 5135F

Unit: Report in "number".
Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

11. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5140F is added immediately following ECCN 5135F, as follows:

5140F Toxic gas monitoring systems.

Controls for ECCN 5140F

Unit: Report in "number".
Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

List of Equipment Controlled by ECCN 5140F

Toxic gas monitoring systems designed to detect phosphorus, sulphur, or fluorine compounds, or designed to detect any chemical weapons precursor or chemical warfare agent, that are:

(a) Designed for continuous operation; and

(b) Capable of detecting such chemicals at a concentration less than 0.1 milligrams per cubic meter of air.

12. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5141F is added immediately following ECCN 5141F, as follows:

5141F Monitoring systems for the detection of chemical compounds having anticholinesterase activity.

Controls for ECCN 5141F

Unit: Report in "number".
Validated License Required: Country Groups S and Z countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

13. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5165F is added immediately following ECCN 1145F, as follows:

5165F Detection or assay systems that are capable of detecting concentrations of less than one part per million in air of biological agents or toxins controlled by ECCN 4997B or ECCN 4998B.

Controls for ECCN 5165F

Unit: Report in "number".
Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

14. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5167F is added immediately following ECCN 5165F, as follows:

5167F Biohazard containment equipment.

Controls for ECCN 5167F

Unit: Report in "number".
Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

List of Equipment Controlled Under ECCN 5167F

Biohazard containment equipment, as follows:

(a) Complete P3 or P4 level laboratory facilities;

(b) Equipment that incorporates or is contained in a P–3 or P–4 containment housing.

15. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 1 (Chemical and Petroleum Equipment), a new ECCN 5170F is added immediately following ECCN 5167F, as follows:

5170F Equipment for the microencapsulation of live microorganisms.

Controls for ECCN 5170F

Unit: Report in "number".
Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

16. In Supplement No. 1 to section 799.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), a new ECCN 5797F is added immediately following ECCN 4784B, as follows:

5797F Intermediate chemicals used in the production of chemical warfare agents.

Controls for ECCN 5797F

Unit: Report in "$ value".
Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE
Reason for Control: Foreign policy.
Special Licenses Available: None.

List of Chemicals Controlled by ECCN 5797F

(a) (C.A.S. #693–13–0) Di-isopropylcarbodiimide;

(b) (C.A.S. #538–75–0) Di-cyclohexocarbodiimide.

17. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 9 (miscellaneous), a new ECCN 5997F is added immediately following ECCN 4997B, as follows:

5997F Complex media (specifically brain/heart infusion media) for the growth of microorganisms in Class 3 or Class 4, in quantities greater than 100 kilograms.

Controls for ECCN 5997F

Unit: Report in "number".
Validated License Required: Country Groups S and Z and countries listed in Supplement No. 5 to part 778 of this subchapter.
GLV $ Value Limit: $0 for all destinations.
Processing Code: TE.
Reason for Control: Foreign policy.
Special Licenses Available: None.

Dated: March 7, 1991.

James M. Lafferayne,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 91-5800 Filed 3-8-91; 4:35 pm]

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 771, 776, and 778

[Docket No. 910249-1049]

Imposition and Expansion of Foreign Policy Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Department of Commerce is proposing to amend the Export Administration Regulations (EAR) in support of U.S. non-proliferation policies. This proposal would impose foreign policy controls on certain exports by providing authority to deny items that already require a validated license, for any reason other than short supply, where the export is determined to be for a facility involved in the design, development, production, or use of missiles or chemical or biological weapons.

This proposal would also impose foreign policy controls on exports to specified destinations when the exporter knows, or to any destination when the exporter is informed by the Office of Export Licensing (OEL), that the commodities, technical data, or software will be used in the design, development, production or use of missiles or of chemical or biological weapons, or are destined for a facility engaged in such activities.

In addition, this proposal would impose foreign policy controls on exports to specified destinations when a U.S. person knows, or to any destination when the U.S. person is informed by OEL, that the commodities, technical data, or software will be used in the design, development, production, or use of missiles or chemical or biological weapons, or are destined for a facility engaged in such activities. Neither may a U.S. person, without a validated license, perform any contract, service, or employment knowing that it assists such activities.

This proposal would also impose foreign policy controls on participation and support by U.S. persons in the design, development, production, or use of missiles or of chemical or biological weapons.

This proposal would restrict participation by U.S. persons in construction of whole plants to produce chemical weapon precursors in certain countries.

This proposal would also make changes in the organization of regulations relating to weapons proliferation, grouping them in newly designated part 778, Proliferation Controls.

DATES: Comments must be received by April 12, 1991.

ADDRESSES: Written comments (six copies) should be sent to: Patricia Muldonian, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Kathryn Sullivan, Bureau of Export Administration, Telephone: (202) 377-8760.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce, in consultation with the Department of State, has decided to propose expanding foreign policy controls in several ways in support of U.S. non-proliferation policies.

One proposed EAR change would provide authority to deny a license for exports of items that already require a validated license, for any reason other than short supply, where the export could be destined for the design, development, production, or use of missiles or chemical or biological weapons, or for a facility engaged in such activities.

The proposed rule would also impose foreign policy controls on exports to specified destinations when the exporter knows the export will be used in the design, development, production, stockpiling, or use of missiles or of chemical or biological weapons, or is destined for a facility engaged in such activities.

The rule does not provide a proposed definition of the term "know". However, consideration is being given to whether such a definition is advisable. The following definition is under consideration for inclusion in the final rule, and comments on the need for and wording of a definition are especially encouraged.

Know. Except as the term is used in part 769, a person shall be considered to know a circumstance or result when that person:

(a) Is aware that such circumstance exists, or that such result is substantially certain to occur; or

(b) Has a firm belief that such circumstance exists, or that such result is substantially certain to occur.

A person knows of the existence of a particular circumstance if that person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist.

In addition, the proposed rule would amend the EAR to make clear that the Office of Export Licensing may inform an exporter at any time that a validated license is required for a specific export or reexport transaction or for exports or reexports to a specific end-user or end-use because of an unacceptable risk that such shipments will be used in sensitive nuclear activities, in the design, development, production, stockpiling, or use of chemical or biological weapons, or in the design, development, production or use of missiles. An exporter or reexporter may be individually informed by OEL, or notice may be published in the Federal Register. This proposal would provide new supplements to the EAR to identify regions and countries, as well as facilities and projects, to which certain validated license requirements apply.

Also, the proposed rule would substitute the term "missiles" for the current "missiles capable of delivering nuclear weapons". The definition of such missiles, as contained in the EAR, is not affected by this change.

Also, the proposed rule would add a new provision to the EAR to restrict participation by U.S. persons in missile, chemical weapons, or biological weapons development. No U.S. person may knowingly export or reexport to specified destinations commodities, software, or technical data, regardless of origin, for use in the design, development, production, stockpiling, or use of chemical or biological weapons, or of missiles, or to a facility engaged in such activities. Nor may a U.S. person, without a validated license, perform any contract, service, or employment knowing that it assists such activities. When a U.S. person has been informed by OEL, these prohibitions apply to any destination. In addition, the rule restricts participation and support by U.S. persons in the design, construction, or export of whole plants to make precursors for chemical weapons. This prohibition also extends to support of any such transactions, through financing, freight forwarding, or other comparable activities. The term "U.S. person" is defined for the purposes of these provisions to include foreign branches of companies organized in the United States.

In amending the Export Administration Act of 1979 in 1985, the Congress added section 6(m), which prohibited the President from restricting transactions in performance of a contract entered into before the date of a report to Congress of the intent to

impose a foreign policy control. The effect of that provision has been to require approval of export license applications when a contract predates the control program, unless denial is based on some other control provision of the EAR. While contract sanctity is provided in this proposal, serious consideration is being given to eliminating these contract sanctity provisions when the final rule is published, in light of the serious concerns raised by missiles or chemical or biological weapons. The Department invites public comments on this issue, as well as all other aspects of the regulation.

Consistent with the prohibitions on trade with Iraq and Kuwait contained in the Executive Orders issued on August 2 and 9, 1990, exporters should obtain guidance from the U.S. Department of Treasury, Office of Foreign Assets Control concerning any export or reexport to Iraq or Kuwait.

On March 7, 1991, the Department submitted a report notifying the Congress of its intent to impose these controls. To provide contract sanctity, export licenses may be issued on a case-by-case basis for the export of commodities, software, or technical data subject to these new controls in performance of a contract or an agreement entered into before March 7, 1991 (the date of notification to Congress of intent to impose these controls).

Rulemaking Requirements and Invitation to Comment

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a foreign and military affairs function of the United States. The Secretary of Commerce has submitted a report to Congress on the need for these controls. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is being issued in proposed form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments on the suggested definition of "know" and on the contract sanctity provisions contained in this rule are especially encouraged.

The period for submission of comments will close (April 12, 1991.). The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4518, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377–2593.

List of Subjects

15 CFR Parts 771 and 776

Exports, Reporting and recordkeeping requirements.

15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, parts 771, 776, and 778 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citations for parts 771, and 778 are revised to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Public Law 96–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); Executive Order 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

2. The authority citation for part 778 is revised to read as follows:

Authority: Public Law 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended; Public Law 96–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95–242, 92 Stat. 141 (42 U.S.C. 2139a(a)); Executive Order 12730 of September 30, 1990 (55 FR 40373, October 2, 1990); and Executive Order 12735 of November 16, 1990 (55 FR 48587, November 20, 1990).

PART 771—AMENDED

3. Section 771.2(c) is amended by removing the word "or" at the end of paragraphs (c)(11) and (c)(12), and by adding new paragraphs (c)(13) and (c)(14) to read as follows:

§ 771.2 General provisions.

* * * * *

(c) * * *

(13) The exporter either:

(i) Knows that the commodity, software or technical data:

(A) Are destined for any facility or project listed in Supplement No. 7 to part 778 of this subchapter; or

(B) Will be used in the design, development, production, or use of missiles in or by a country where a facility or project listed in Supplement No. 7 to part 778 of this subchapter is located; or

(ii) Is informed by OEL that a validated license is required for export to a consignee, wherever located.

because the export may apply to the design, development, production, or use of missiles;

(14) The exporter either:

(i) Knows that the commodity, software or technical data:

(A) Are destined for any facility listed in Supplement No. 6 to part 778 of this subchapter; or

(B) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a country listed in Supplement No. 5 to part 788; or

(ii) Is informed by OEL that a validated license is required for export to a consignee, wherever located, because the export may apply to the design, development, production, stockpiling, or use of chemical or biological weapons.

* * * * *

PART 776—AMENDED

4. Part 778 is amended by removing §§ 778.18, 778.19, and 778.20.

5. The heading to part 778 is revised to read as follows:

PART 778—PROLIFERATION CONTROLS

6. Section 778.1 is revised to read as follows:

§ 778.1 Purpose.

(a) *Scope.* This part defines the types of transactions that are governed by the U.S. policy concerning the non-proliferation of chemical and biological weapons, nuclear weapons or explosive devices, missile systems and the U.S. maritime nuclear propulsion policy. The controls implement policies set out in section 3(2) (A) and (B) of the Export Administration Act and section 309(c) of the Nuclear Non-Proliferation Act of 1978 (Pub. L. 95–242), that is:

(1) To exercise the necessary vigilance from the standpoint of their significance to the national security of the United States;

(2) To further significantly the foreign policy of the United States or to fulfill its international responsibilities; and

(3) To maintain controls over items because of their potential significance for nuclear explosive purposes.

(b) *Related legislation.* These controls supplement those exercised by the Nuclear Regulatory Commission and the Department of Energy under the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 and other statutes, and by the Office of Defense Trade Controls, Department of State, under the Arms Export Control Act of 1976. (See §770.10 of this subchapter.)

§ 778.2 [Amended]

7. In § 778.2 paragraph (a) is amended by removing the last two sentences.

8. Section 778.3 is amended by adding two new sentences at the end of the introductory text to read as follows:

§ 778.3 Additional validated license requirements for exports with certain nuclear end-uses.

* * * When the Office of Export Licensing determines that there is an unacceptable risk of use in or diversion to such activities, it may inform the exporter, either individually or through amendment to the regulations in this subchapter, that an individual validated license is required. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of this section.

* * * * *

9. A new § 778.6 is added to read as follows:

§ 778.6 Preparing nuclear-related application.

An application for a license to export commodities or technical data subject to provisions of § 778.2, § 778.3, or § 778.5 shall be prepared and submitted on Form BXA–622P, Application for Export License, in accordance with instructions set forth in §§ 772.5 and 779.5(e) of this subchapter with the following additional instructions:

(a) *Identification of License Application.* Enter the words "NUCLEAR CONTROLS" in Item 4, "Special Purpose," of Form BXA–622P.

(b) *Consignee in country of ultimate destination.* If the consignee in the country of ultimate destination is not the end-user of the commodities give the name and address of the end-user in item 12, "Special End-Use," or on an attachment to the application, and if known, the specific geographic locations of any installations, establishments, or sites at which the commodities will be used.

(c) *Commodity description.* (1) If the CCL entry in question is divided into sub-entries, indicate the specific sub-entry that describes the commodity. In addition, specifications or descriptive brochures should be provided when available.

(2) If applicable, include a description of any specific features of design or specific modifications that make the commodity capable of the uses described in § 778.3.

(d) *End-use.* (1) A vague or general end-use description will delay review of an application. Applications indicating resale as the end-use sometimes must be returned without action in order to obtain more information.

(2) When submitting an application under § 778.3, fully explain the basis for the knowledge or belief that the commodities are intended for the purpose(s) described therein. Additionally, indicate, if possible, the specific end-use(s) the commodities will have in the designing, developing, fabricating, or testing nuclear weapons or nuclear explosive devices or in the designing, constructing, fabricating, or operating the facilities described in § 778.3.

10. Sections 778.7 and 778.8 are revised to read as follows:

§ 778.7 Equipment and related technical data used in the design, development, production, or use of missiles.

(a) *Validated license requirements.* In support of U.S. foreign policy to limit the proliferation of missiles, an individual validated license is required to export certain commodities, software, and technical data related to the design, development, production, or use of such missiles to Country Groups QSTVWYZ.

(1) *Commodities subject to weapons delivery systems controls.* The commodities that require a validated license because they are subject to foreign policy controls on weapons delivery systems appear within ECCNs 2018A, 2118A, 4118B, 4302B, 1357A, 1361A, 1362A, 1385A, 1460A, 1485A, 1501A, 1518A, 1517A, 4518B, 1522A 1529A, 4529B, 1531A, 1533A, 1564A, 4564B, 1585A, 1568A, 4568A, 4587B, 1595A, 1715A, and 1748A. Exporters should consult the Reason for Control paragraph in each ECCN to determine the specific items subject to these foreign policy controls.

(2) *Technical data and software subject to weapons delivery systems controls.* Technical data and software that require a validated license because they are subject to foreign policy controls on nuclear weapons delivery systems are listed in paragraph (4) of Supplement No. 4 to part 779 of this subchapter.

(3) *Definition.* The term "missiles" is defined as rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones) capable of delivering at least 500 kilograms (kg) payload to a range of at least 300 kilometers (km).

(b) *Controls on other commodities, technical data, and software.* BXA will review license applications, in accordance with the licensing policy described in paragraph (d) of this section, for commodities, technical data, or software not described in paragraph (a) of this section that:

(1) Require a validated license for reasons other than short supply; and

(2) Could be destined for the design, development, production, or use of missiles, or for a facility engaged in such activities.

(c) *Additional validated license requirements based on end-uses related to the design, development, production, or use of missiles.* (1) In addition to the validated license requirements described in paragraph (a) and paragraph (b) of this section, a validated license is required to export any commodity, software, or technical data (excluding technical data exportable under the provisions of General License GTDA and commodities identified in ECCN 7599I or 7999I), when the exporter knows that the commodities, software, or technical data:

(i) Are destined for any facility or project listed in Supplement No. 7 to part 778; or

(ii) Will be used in the design, development, production or use of missiles in or by a country where a facility or project listed in Supplement No. 7 to part 778 is located.

(2) The Office of Export Licensing may inform the exporter, either individually or through amendment to these regulations, that an individual validated license is required because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of paragraph (c)(1) of this section. Those facilities, projects, companies, or government entities currently identified are listed in Supplement No. 7 to part 778.

(d) *Licensing policy.* (1) Unless the criteria stated in paragraphs (d)(3), (d)(4) or (d)(5) of this section are met, applications to export the commodities will be considered on a case-by-case basis to determine whether the export would make a material contribution to the proliferation of missiles. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on individual applications:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, or use of missiles;

(iii) The capabilities and objectives of the missile and space programs of the recipient country;

(iv) The non-proliferation credentials of the importing country; and

(v) The types of assurances or guarantees against design, development production or use, of missiles delivery purposes that are given in a particular case.

(3) Consistent with section 6(m) of the EAA, the following contract sanctity dates have been established:

(i) License applications involving contracts for batch mixers specified in ECCN 4118B that were entered into prior to January 19, 1990, will be considered on a case-by-case basis.

(ii) License applications for commodities, technical data, or software described only in paragraph (b) or (c) of this section that involve a contract entered into prior to March 7, 1991, will be considered on a case-by-case basis.

(iii) Applicants who wish a pre-existing contract to be considered in reviewing their license applications must submit documentation sufficient to establish the existence of a contract.

(e) Commodities and technical data described in paragraph (a) of this section are not eligible for special licenses.

§ 778.3 Chemical precursors and biological agents, and associated equipment and technical data.

(a) *Validated license requirements.* The following controls are maintained in support of the U.S. foreign policy of opposing the proliferation and illegal use of chemical and biological weapons:

(1) Chemicals identified in ECCN 4798B require a validated license for export from the United States to all destinations except Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Neitherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom.

(2) Equipment identified in EECNs 5129F, 5132F, 5133F, 5134F, 5135F, 5140F, and 5141F in the Commodity Control List, which can be used in the production of chemical weapons precursors and chemical warfare agents, requires a validated license for export from the United States to Country Groups S and Z and regions and countries listed in Supplement No. 5 to Part 778.

(3) Viruses and viroids identified in ECCN 4997B and bacteria, fungi, and protozoa identified in ECCN 4998B require a validated license to all destinations except Canada.

(4) Equipment and materials identified Regional Director, ECCNs 5165F, 5167F, 5170F, 5797F, and 5997F, which can be used in the production of biological agents, require a validated license for export from the United States to Country Groups S and Z and regions and countries listed in Supplement No. 5 to part 778.

(5) The following restrictions apply to use of General License GTDR:

(i) General License GTDR is not available for technical data for the production of chemical precursors described in paragraph (a)(1) of this section, except to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom;

(ii) General License GTDR is not available for the export of technical data for the production of commodities described in paragraphs (a)(2) and (a)(4), of this section to regions and countries listed in Supplement No. 5 to Part 778;

(iii) General License GTDR is not available for the export of technical data for the production of commodities described in paragraph (a)(3) of this section;

(iv) (A) General License GTDR is not available for technical data for facilities designed or intended to produce chemical weapons precusors controlled by ECCN 4798B on the CCL, involving the following:

(*1*) Overall plant design;

(*2*) Design, specification, or procurement of equipment;

(*3*) Supervision of construction, installation, or operation of complete plant or components thereof;

(*4*) Training of personnel;

(*5*) Consultation on specific problems involving such facilities.

(B) This prohibition on use of General License GTDR does not apply to exports to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom;

(v) General License GTDR is available only to Australia, Austria, Belgium, Canada, Denmark, the Federal Republic of Germany, France, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Switzerland, Turkey, and the United Kingdom, for software for process control that is specifically configured to control or initiate the production of chemical weapons precusors controlled by ECCN 4798B.

(b) *Controls on other commodities, technical data, and software.* BXA will

review license applications, in accordance with the licensing policy described in paragraph (d) of this section, for commodities, technical data, or software not described in paragraph (a) of the section that:

(1) Require a validated license for reasons other than short supply;

(2) Are destined to a country other than those listed in paragraph (a)(1) of this section; and

(3) Could be destined for the design, development, production, stockpiling, or use of chemical or biological weapons, or for a facility engaged in such activities.

(c) *Additional validated license requirements based on end-uses related to the design, development, production, stockpiling, or use of chemical or biological weapons.* (1) In additon to the validated license requirements described in paragraph (a) and paragraph (b) of this section, a validated license is required to export any commodity, software, or technical data excluding technical data exportable under the provisions of General License GTDA and commodities identified in ECCN 7599I or 7999I), when the exporter knows that the commodities, software, or technical data:

(i) Are destined for any facility listed in Supplement No. 6 to par 778; or

(ii) Will be used in the design, development, production, stockpiling, or use of chemical or biological weapons in or by a region or country listed in Supplement No. 5 to part 778.

(2) The Office of Export Licensing may inform the exporter, either individually or through amendment to these regulations, that an individual validated license is required because there is an unacceptable risk of use in or diversion to such activities, anywhere in the world. However, the absence of any such notification does not excuse the exporter from compliance with the validated license requirements of paragraph (c)(1) of this section. Those facilities currently identified are listed in Supplement No. 6 to part 778.

(d) *Licensing policy.* (1) Unless the criteria stated in paragraph (d)(3) of this section are met, applications to export the commodities and technical data subject to this policy will be considered on a case-by-case basis to determine whether the export would make a material contribution to the design, development, production, stockpiling, or use of chemical or biological weapons. When an export is deemed to make such a contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on individual applications:

(i) The specific nature of the end-use;

(ii) The significance of the export in terms of its contribution to the design, development, production, stockpiling, or use of chemical or biological weapons;

(iii) The non-proliferation credentials of the importing country; and

(iv) The types of assurances or guarantees against design, development, production, stockpiling, or use of chemical or biological weapons that are given in a particular case.

(3) *Contract sanctity.* Consistent with section 6(m) of the EAA, the following contract sanctity dates have been established.

(i) The contract sanctity date for exports to Syria of dimethyl methylphosphonate, methyl phosphonyldifluoride, phosphorous oxychloride, thiodiglycol, dimethylamine hydrochloride, dimethylamine, ethylene chlorohydrin (2-chloroethanol), and potassium fluoride is April 28, 1986.

(ii) The contract sanctity date for exports to Iran or Syria of dimethyl phosphite (dimethyl hydrogen phosphite), methyl phosphonyldichloride, 3-quinuclidinol, N,N-diisopropylaminoethane-2-thiol, N,N-diisopropylaminoethyl-2-chloride, 3-hydroxy-1-methylpiperidine, trimethyl phosphite, phosphorous trichloride, and thionyl chloride is July 6, 1987.

(iii) The contract sanctity date for exports to Iran or Syria of items in ECCNs 4997B and 4998B is February 22, 1989.

(iv) The contract sanctity date for exports to Iran of dimethyl methylphosphonate, methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorous oxychloride, and thiodiglycol is February 22, 1989.

(v) The contract sanctity date for exports to Syria of dimethyl methylphosphonate, methylphosphonyl dichloride, and methylphosphonyl difluoride is February 22, 1989.

(vi) The contract sanctity date for exports to Iran, Libya, or Syria of potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N-diethylethanolamine is December 12, 1989.

(vii) The contract sanctity date for exports to all destinations (except Iran or Syria) of phosphorus trichloride, trimethyl phosphite, and thionyl chloride is December 12, 1989. For exports to Iran or Syria, paragraph (d)(3)(ii) of this section applies.

(viii) The contract sanctity date for exports to all destinations (except Iran, Libya, or Syria) of 2-chloroethenol and triethanolamine is January 15, 1991. For exports of 2-chloroethanol to Syria, paragraph (d)(3)(i) of this section applies. For exports of triethanolamine to Iran, Libya, or Syria, paragraph (d)(3)(vi) of this section applies.

(ix) The contract sanctity date for exports to all destinations (except Iran, Libya, or Syria) of chemicals controlled by ECCN 4798B is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), methylphosphonyl dichloride, methylphosphonyl difluoride, phosphorous oxychloride, phosphorous trichloride, thiodiglycol, thionyl chloride, triethanolamine, and trimethyl phosphite. (See also paragraphs (d)(3)(vi) and (d)(3)(vii) of this section.) For exports to Iran, Libya, or Syria, see paragraphs (d)(3)(i) through (d)(3)(vi) of this section.

(x) The contract sanctity date for exports of the following commodities and technical data is March 7, 1991:

(A) equipment (for producing chemical weapon precursors and chemical warfare agents) described in paragraph (a)(2) of this section;

(B) Equipment and materials (for producing biological agents) described in paragraph (a)(4) of this section;

(C) Technical data described in paragraph (a)(5) of this section; and

(D) Commodities, technical data, or software described in paragraph (c) of this section.

(xi) The contract sanctity date for exports of commodities, technical data, or software described in paragraph (b) of this section is March 7, 1991.

(xii) The contract sanctity date for reexports of chemicals controlled under ECCN 4798B is March 7, 1991, except that the contract sanctity date for reexports of these chemicals to Iran, Libya, or Syria is December 12, 1989.

(xiii) The contract sanctity date for reexports of viruses and viroids identified under ECCN 4997B and bacteria fungi, and protozoa identified under ECCN 4998B is March 7, 1991.

(4) When preparing a license application for chemicals, applicants shall type the Chemical Abstract Service (C.A.S.) Registry number in Item 9(b) before each chemical name. The C.A.S. numbers are listed with the controlled chemicals in ECCN 4798B under the "List of Chemicals." See Supplement No. 1 to § 799.2 of this subchapter, Interpretation 23: Precursor Chemicals.